

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF OKLAHOMA

3 INDECK KEYSTONE ENERGY, LLC,
4 a Delaware limited liability
corporation,

**CONFIDENTIAL
TESTIMONY**

5 Plaintiff,
6

7 vs.

No. 04-CV-325E

8 VICTORY ENERGY OPERATIONS,
9 LLC, a Delaware limited
liability corporation,
10

11 Defendant.
12

COPY

13 DEPOSITION OF TRENT MILLER,
14

15 a witness called on behalf of the Plaintiff, on the
2nd day of February, 2006, at 320 South Boston, in
16 the City of Tulsa, County of Tulsa, and State of
Oklahoma, commencing at 10 a.m., before the
undersigned, Elizabeth Davidson, a Certified
17 Shorthand Reporter in and for the State of Oklahoma.

18 Fee for Original: \$
19 Paid by Plaintiff.

20 ELIZABETH DAVIDSON, CSR #122
21

22
23
24 DAVIDSON REPORTING SERVICE
CERTIFIED SHORTHAND REPORTERS
5508 South Lewis
Tulsa, OK 74105
25 (918) 745-9959

EXHIBIT

tabbles

4

1 that VEO had entered into a license agreement with
2 Erie Power Technologies?

3 A. Yes.

4 Q. What did you understand VEO to have
5 licensed pursuant to the license agreement with Erie
6 Power Technologies?

7 A. The Keystone boiler line.

8 Q. Did you ever receive a copy of the license
9 agreement between VEO and EPTI?

10 A. No.

11 Q. Did you ever read a copy of the license
12 agreement between VEO and EPTI?

13 A. No.

14 Q. Have you even seen the license agreement
15 before?

16 A. No.

17 Q. Did you ever request a copy of the license
18 agreement from anyone at VEO?

19 A. No.

20 Q. What was your understanding of the
21 Keystone boiler line that was licensed by VEO?

22 MR. SHEEAN: I'm going to object,
23 foundation. He's already testified he hasn't seen
24 the agreement.

25 But you can answer.

1 Recovery.

2 Q. Anything else?

3 A. Fire tube heat recovery boilers at
4 Johnston.

5 Q. Anything else?

6 A. I think that pretty well covers it.

7 Q. Did you consider yourself to be a member
8 of a design team with respect to the Keystone boilers
9 that VEO licensed?

10 A. The design. I'm just not sure what you
11 mean by design.

12 Q. For the Keystone boilers, was there a
13 standard set of drawings?

14 A. Yes.

15 Q. And VEO received a standard set of
16 drawings for the Keystone boiler?

17 MR. SHEEAN: Objection, lack of foundation
18 and asked and answered.

19 A. We received markups of Keystone drawings.

20 Q. (By Mr. Gisleson) Did VEO also receive a
21 standard set of Keystone drawings?

22 MR. SHEEAN: Same objections.

23 A. I believe so.

24 Q. What did you understand the purpose to be
25 of the standard set of Keystone drawings that VEO

1 received?

2 A. They were to be used for fabrication of
3 boilers.

4 Q. Were they also to be used in the design of
5 the boilers?

6 MR. SHEEAN: Objection, vague.

7 A. Yeah, define design.

8 Q. (By Mr. Gisleson) Was it necessary to do
9 any further design work with respect to the Keystone
10 boilers beyond what was shown on the standard
11 drawings?

12 MR. SHEEAN: Same objection.

13 A. No.

14 Q. (By Mr. Gisleson) Did VEO in fact use the
15 standard drawings that it received from EPTI for all
16 the Keystone boilers it sold, at least that's the
17 ones on which you worked?

18 A. With the exception of one, yes.

19 Q. What's the one exception?

20 A. The drawings that we received were 1950
21 vintage hand drawings.

22 Q. So what did VEO do with those drawings?

23 MR. SHEEAN: Objection, foundation.

24 You can answer, if you know.

25 A. We used those to make new drawings,

1 updating them to match the other drawings provided by
2 EPTI.

3 Q. (By Mr. Gisleson) Did VEO utilize
4 information from other Keystone drawings to match the
5 drawings it created from the 1950 hand drawings?

6 A. Yes.

7 Q. What was the project name for that one
8 exception?

9 A. Roswell Park Cancer Institute.

10 Q. Did VEO update any of the Keystone
11 drawings it received to comply with applicable code?

12 MR. SHEEAN: Objection, foundation.

13 Q. (By Mr. Gisleson) I'll rephrase the
14 question. In your capacity as engineering manager
15 for VEO, did you ever review the Keystone drawings to
16 determine whether any updates were necessary to meet
17 an applicable code?

18 A. The applicable ASME code, yes.

19 Q. Are there any codes, in addition to ASME,
20 that applied to Keystone boilers that were sold by
21 VEO?

22 MR. SHEEAN: Objection, foundation.

23 Q. (By Mr. Gisleson) Did you familiarize
24 yourself, as the engineering manager for VEO, as to
25 what the different codes were that applied to

1 Keystone boilers sold by VEO?

2 A. The -- the main code is the ASME boiler
3 and pressure vessel code, section one.

4 Q. Are there any other codes that applied to
5 the Keystone boilers that were sold by VEO?

6 A. No.

7 Q. Was it necessary to update any of the
8 Keystone designs that VEO received in order to comply
9 with current boiler and pressure vessel code under
10 the ASME?

11 A. Not that I recall.

12 Q. Did anyone at VEO ever tell you that it
13 was necessary to update the Keystone drawings in
14 order to comply with the ASME code?

15 A. The one thing that we did have to revise
16 is just the -- which code additionally is referenced
17 on the drawings, you know, so just a note, but no
18 physical changes.

19 Q. So that the current ASME code matched the
20 ASME code that was in effect at the time that the
21 drawing was created?

22 A. So that the --

23 MR. SHEEAN: Objection, foundation.

24 A. So that the drawing referenced the correct
25 code that was in at -- applicable at the time of the

1 A. Repeat the question, please.

2 Q. (By Mr. Gisleson) I'll rephrase it.

3 Did VEO receive the membrane wall drawings from
4 EPTI in connection with the first project that it
5 sold?

6 MR. SHEEAN: Objection, foundation.

7 A. Yes.

8 Q. (By Mr. Gisleson) Is there a difference,
9 in your view, between welded wall and membrane wall?

10 A. No.

11 Q. And what's the terminology you use, welded
12 wall or membrane wall?

13 A. Either one.

14 Q. What is a membrane wall?

15 A. It's where there's metal welded between
16 the adjacent tubes to form a gas tight seal.

17 Q. Do you know what tangent tube walls are?

18 A. Yes.

19 Q. What are tangent tube walls?

20 A. It's where the tubes are just located
21 adjacent to each other.

22 Q. Has VEO ever sold a boiler of any kind
23 that included a tangent tube furnace or outer wall?

24 MR. SHEEAN: Objection, foundation.

25 Q. (By Mr. Gisleson) You can answer.

1 A. Not that I'm aware.

2 Q. Did VEO receive drawings from EPTI that
3 showed a tangent tube design for furnace and outer
4 walls?

5 MR. SHEEAN: Objection, foundation.

6 A. I have to answer, right?

7 Q. (By Mr. Gisleson) Yes.

8 MR. SHEEAN: If you -- if you understand.

9 A. Yes.

10 Q. (By Mr. Gisleson) Did you ask anyone at
11 VEO why VEO was receiving Keystone drawings that
12 included tangent tube walls?

13 A. No.

14 Q. Did you speak with anyone at EPTI to ask
15 why VEO was receiving Keystone drawings that showed a
16 tangent tube wall?

17 A. Yes.

18 Q. Who?

19 A. It would be speculation, I don't remember
20 for sure.

21 Q. Do you recall the substance of any of
22 those conversations?

23 A. I know the outcome.

24 Q. Do you recall the substance of any of the
25 conversations?

1 MR. SHEEAN: Objection, asked and
2 answered.

3 You can answer.

4 A. Substance as far as what was discussed?

5 Q. (By Mr. Gisleson) Correct.

6 A. Yes.

7 Q. What was the substance?

8 A. The fact that the only thing they had
9 available were the 1950 vintage tangent tube
10 drawings.

11 Q. Did you, from time to time, speak with
12 Dave Briggs at EPTI?

13 A. Yes.

14 Q. Did you speak with Dave Briggs concerning
15 drawings that VEO was receiving?

16 A. Yes.

17 Q. Did Dave Briggs ever tell you that VEO had
18 only licensed the standard M series Keystone boiler?

19 A. I don't recall.

20 Q. Did Dave Briggs ever tell you that welded
21 wall or membrane walls were not included in the
22 design of the standard M series boiler?

23 A. Not that I recall.

24 Q. Did you ever experience frustration
25 dealing with EPTI because EPTI was telling you that

1 VEO was requesting information that was not part of
2 the standard M series Keystone design?

3 A. Yes.

4 Q. On how many occasions did that occur?

5 A. Numerous.

6 Q. What was your response to EPTI?

7 A. I guess I don't understand.

8 Q. What did you say to EPTI when Dave Briggs
9 or others told you that the information requested by
10 VEO was not part of the standard M series Keystone
11 boiler?

12 A. I -- I don't recall. I couldn't tell you
13 exactly.

14 Q. Did you ever go back, at that point, to
15 John Viskav and say words to the effect of EPTI is
16 giving me a hard time about requesting information
17 that is not part of the standard Keystone M series
18 boiler?

19 A. I don't recall.

20 Q. At some point, Mark White went to work at
21 VEO, correct?

22 A. Yes.

23 Q. Did you ever have any discussions with
24 Mark White about what the standard M series Keystone
25 boiler is?

1 A. Repeat the question?

2 Q. At what point did VEO stop following that
3 process for modifications for the projects for which
4 you were the project manager?

5 A. I would say VEO didn't stop. We -- The
6 first item is highlighted by Erie, which that only
7 occurred at the very first unit.

8 Q. Thereafter, to your knowledge, for the
9 projects on which you were the project manager, did
10 VEO go back to Erie to discuss particular
11 modifications that VEO wanted to make to a boiler
12 being sold under the Keystone name?

13 MR. SHEEAN: Objection, term modification
14 is a defined term in the case, and it's misleading.

15 Q. (By Mr. Gisleson) You can answer.

16 A. Define modifications.

17 Q. Do you have an understanding as to
18 modifications that VEO was making to Keystone boilers
19 for the projects for which you were the project
20 manager?

21 MR. SHEEAN: Same objection.

22 A. It depends what you mean for
23 modifications.

24 Q. (By Mr. Gisleson) Did you ever have an
25 understanding that VEO was making modifications to

1 any of the designs that VEO received --

2 MR. SHEEAN: Same objection --

3 Q. (By Mr. Gisleson) -- from EPTI?

4 MR. SHEEAN: Sorry.

5 Same objection, modification is a defined term,
6 and he's asked you what you mean by modifications,
7 and you haven't told him, so I object, vague.

8 A. To the design? No.

9 Q. (By Mr. Gisleson) Are you aware of VEO
10 ever creating any new design of any aspect or feature
11 of the Keystone boiler?

12 A. No.

13 Q. Were there any quality standards that
14 applied to the Keystone boilers that Victory was
15 producing?

16 MR. SHEEAN: Objection, vague.

17 A. Yeah, define quality standards.

18 Q. (By Mr. Gisleson) Are you aware of any
19 quality standards that applied to the Keystone
20 boilers?

21 MR. SHEEAN: Same objection, vague. You
22 didn't explain what you meant by quality standards.

23 A. Please define quality standards.

24 Q. (By Mr. Gisleson) Are you aware of what
25 quality assurance is?

1 Q. Did anyone at VEO ever express an opinion
2 to you about Indeck Keystone Energy, of any kind?

3 A. Not that I recall.

4 Q. Do you consider Indeck Keystone Energy to
5 be a competitor of VEO?

6 A. I don't know.

7 MR. GISLESON: Mark that, please.

8 This is the same document I marked before, but I
9 didn't go back and find a Bates stamped copy of it,
10 but you do have it, it was produced.

11 Q. (By Mr. Gisleson) I'd like to show you
12 what's been marked as Miller Exhibit 4, do you see
13 how, at the top of the first page, there's an e-mail
14 from Dave Briggs to Trent Miller, dated July 10,
15 2003, on the subject of a couple questions?

16 A. Yes.

17 Q. Do you recall receiving this e-mail?

18 A. No.

19 Q. If you look at the bottom of the first
20 page, there's an e-mail from Trent Miller to Dave
21 Briggs, dated July 10, 2003, on the subject a couple
22 of questions, in which you write: Dave, we have a
23 new project that we were going to make a 14M, but
24 I've been looking at the boiler that you just -- that
25 you built for us, your project 2023, and am getting

1 confused. My understanding was that 2023 was a 15M,
2 but the base dimensions are only one inch longer than
3 a 14M.

4 And then Dave Briggs writes back to you: In
5 response to your questions, please remember that the
6 license agreement was for our standard M series
7 keystone package boilers. These boilers are all
8 saturated, refractory rear and front wall with a
9 tangent furnace wall. Our order G.O.2023 was a
10 special keystone, not a 14M, not a 15M, but a
11 special. This order was an all welded wall design.
12 You cannot compare apples to oranges. They are just
13 not the same. So to answer your question as to what
14 model size was G.O.2023, the answer is that it is not
15 a model size.

16 Do you see that?

17 A. Yes.

18 Q. Even though you do not recall reading this
19 e-mail, do you recall the substance of the e-mail?

20 A. Yes.

21 Q. After receiving that information from Dave
22 Briggs, what did you do?

23 A. I don't recall.

24 Q. Does this refresh your recollection in any
25 way as to whether you went back and spoke with John

1 Viskav, Shawn Brewer or anyone at VEO as to what the
2 boiler was that was licensed by VEO?

3 A. No.

4 MR. SHEEAN: John, it's about five to 12.

5 MR. GISLESON: Yeah, just let me just
6 finish up this line of questioning, won't take me a
7 few more minutes.

8 MR. SHEEAN: Okay.

9 MR. GISLESON: Mark that, please.

10 Q. (By Mr. Gisleson) I'd like to show you
11 what's been marked as Exhibit 5. Is this a copy of
12 an e-mail that you sent on October 22, 2003 to Mark
13 White and Ted Fuhrman on the subject of Keystone M
14 series refractory front and tube and tile rear wall
15 details?

16 A. According to the heading here, yes.

17 Q. Do you recall sending this e-mail?

18 A. No.

19 Q. Do you have any reason to believe this is
20 not an e-mail that you prepared and sent?

21 A. No.

22 Q. You wrote: Mark, Dave Briggs did in fact
23 forward somewhat updated typical RTI drawings. What
24 does RTI stand for?

25 A. Refractory tile insulation.

1 Q. (By Mr. Gisleson) I'm sorry.

2 Were the marked up drawings that EPTI sent to
3 VEO sent separate from the standard M series Keystone
4 drawings that EPTI sent to VEO?

5 MR. SHEEAN: Objection, foundation.

6 A. I don't recall.

7 Q. (By Mr. Gisleson) You then write, in the
8 third paragraph: My biggest frustration is when I'm
9 told that's not a standard M series. It may not be a
10 standard, but it is the way that they have been
11 built. The most recent request was for a drawing of
12 the rear wall tubes with an access opening. The
13 initial statement was the standard M series doesn't
14 have a furnace access opening. Ted did ultimately
15 look back to see if there were any 10M to 13Ms with
16 rear access doors. He reported that there weren't
17 any.

18 Was there more than one occasion in which you
19 were told that's not a standard M series with respect
20 to particular drawing or design that you wanted?

21 MR. SHEEAN: Objection, asked and
22 answered.

23 Q. (By Mr. Gisleson) I'll withdraw the
24 question.

25 Does this e-mail help orient you in time as to